

No. 9/5/84-6 Lab./4141.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of Haryana Roadways, Hissar.

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 209 of 80

between

SHRI CHANDER SINGH, WORKMAN AND THE MANAGEMENT OF HARYANA ROADWAYS,
HISSAR

Present :

Shri S.S. Gupta, A.R. for the workman.

Shri V.K. Kohli, A.R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Chander Singh and the management of Haryana Roadways, Hissar, to this Court, for adjudication, —*vide* Labour Department Gazette, Notification No. ID/HSR/37-80/50725, dated 23rd September, 1980:—

Whether the termination of services of Shri Chander Singh was justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the workman is that he was employed with the respondent for the last 10 years and that although his work and conduct has been satisfactory but the respondent choose to terminate his services on 19th April, 1980 after holding a farce of an enquiry, in which he was not given an opportunity of any participation and that the procedure adopted by the Enquiry Officer was not in consonance with the principles of natural justice and further the punishment awarded to him was shockingly disproportionate to the alleged gravity of the offence. So, there is a prayer for reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, the claim of the workman has been controverted. It is alleged that the services of the workman were terminated after holding a valid and proper domestic enquiry regarding serious allegations of dereliction of duties against the workman. It is further averred earlier also the workman committed many acts of omission and commission and so, it is alleged that the order of termination was legal and justified.

4. In the rejoinder filed by the workman, he has controverted the various pleas taken by the respondent and the parties entered upon the following issues for adjudication:—

1. Whether the domestic enquiry conducted by the management is fair and proper?
2. Whether the termination of services of Shri Chander Singh, was justified and in order? If not, to what relief is he entitled?

5. Subsequently on an application filed by the learned Authorised Representative of the management I passed an order, dated 11th September, 1984 that issue regarding domestic enquiry shall be treated as preliminary issue. Both the parties were allowed to produce their evidence on the preliminary issue. Both the learned Authorised Representatives of the parties heard. Documents perused. My findings on the issues framed are as under:—

Issue No. 1:

6. To prove this issue, the management examined MW-1 Shri Moti Lal, clerk, Haryana Roadways, Hissar, who stated that a report was received against the workman from Shri Rajinder Singh, Chief Inspector. The same is Ex. M-1. On the basis of the report, chargeheet Ex. M-2 was issued and a reply was filed by the workman, which is Ex. M-3. Finding the reply unsatisfactory, the General Manager, Roadways, passed an order appointing Shri Kudip Singh, Traffic Manager as an Enquiry Officer—*vide* order, Ex. M-4. Finding of the Enquiry Officer Ex. M-5, on the basis of which, final show cause notice Ex. M-6 was given and the reply filed by the workman is Ex. M-7 and thereafter giving the workman an opportunity of personal hearing, the General Manager, Roadways passed an order of termination Ex. M-8.

7. MW-2 Kuldip Singh, Traffic Manager, stated that.—*vide* order of the General Manager, Roadways he held an enquiry against the workman. His report is Ex. M-5 and that during the enquiry proceedings he recorded the statement of the workman Shri Chander Singh and Rajinder Singh, Chief Inspector and that the workman refused to cross-examine the witnesses of the department.

8. The workman appeared as his own witness as WW-1 and admitted that he was given a charge-sheet of which a reply was filed by him but he was not given any intimation regarding date of enquiry and he was called from duty to join the enquiry proceedings and that the statement of Shri Rajinder Singh was not recorded in his presence, nor he was given an opportunity of cross-examination and that he was also not given an opportunity of giving defence. He further stated that on the alleged date i.e. 18th September, 1979 he was deputed to go to village Kheri where a bus has turned turtle and that he was to take out the bus with the help of the crane fitted on a bus and he was accompanied by Shri Bhag Mal and Bhag Chand.

9. The learned Authorised Representative of the respondent Shri V. K. Kohli, tried to support the order of termination by arguing that the same was passed by the General Manager after considering the report of the Enquiry Officer Shri Kuldeep Singh. He further contended that there are no reason to disbelieve the statement of Shri Rajinder Singh, Chief Inspector, who was given information regarding unbecoming behaviour of the workman by the State Transport Controller, Haryana, Chandigarh, who happen to pass that day from Jind to Hansi. Be that it may be so, the most important witness in this case would have been the State Transport Controller, Haryana, Chandigarh, whose name does not figure any where in the chargesheet and has not been examined by the department as its witness. Shri Rajinder Singh the star witness of the department on whose testimony adverse finding has been given against the workman by the Enquiry Officer was not present at the time when a checking was made by the State Transport Controller and enroute to Hansi. He was informed about the behaviour of the workman on the next date i.e. 19th September, 1979 when he went to the office at Hansi. The learned Authorised Representative of the workman succeeded in demolishing the report of the Enquiry Officer by arguing that there is mention in the report of the Enquiry Officer that the statement of Shri Rajinder Singh Chopra, Chief Mechanic, who deputed the workman to go to village Kheri to take out the bus, which has turned turtle and his statement was recorded by the Enquiry Officer on 23rd January, 1980, but there is no mention in the report of the Enquiry proceedings filed in the Court that the workman was ever given any opportunity of cross-examining this witness. So, there are infirmities galore in the procedure adopted by the Enquiry Officer and the enquiry held by him was not at all in consonance with the principles of natural justice and as such the enquiry report is vitiated by irregularities committed by the Enquiry Officer and is not sustainable in the eyes of law. Except the enquiry report, there is no allegation against the workman and resultantly the order of termination passed on the basis of the same cannot be sustained.

10. I was inclined to afford an opportunity to the management to adduce evidence on merits regarding allegations against the workman, but the learned Authorised Representative of the workman rightly contended that since no such right was reserved by the management, the Court *suo-moto* cannot grant any such opportunity. He made this submission on the basis of law laid down in 1985 (I) LLJ, page 39 between Amar Nath and Swatantra Bharat Mills and another. Another authority on the point cited was 1979 (II) LLJ, 194 Shankar Chakarvarti and Britannia Biscuit Co. Ltd., in view of the law laid down in this two authorities, the management cannot be afforded any opportunity of adducing evidence on merits regarding the allegations against the workman.

Issue No. 2:

11. Since preliminary issue regarding domestic enquiry has gone against the management, the second issue framed need not be decided.

12. In the light of my foregoing discussion, the order of termination based upon the enquiry vitiated by factual and procedural irregularities, cannot be sustained and as such the same is set aside and since the workman was prompt in raising an industrial dispute after his termination, he cannot be denied the benefit of back wages. So, the workman is ordered to be reinstated forthwith with continuity of service and full back wages. The reference is answered and returned accordingly. There is no order as to cost.

Dated 8th May, 1985.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endst. No. 209/80/775, dated 11th May, 1985.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL
Presiding Officer,
Labour Court, Rohtak.